N. E. 275. The shareholder therefore has no preference upon his mortgages. His interest, if any, as an unpaid vendor, independent of the mortgages, is subject to the liens for the same reason. *Bohn Manufacturing Co.* v. *Kountze*, 30 Neb. 719, 46 N. W. 1123; *Lee* v. *Gibson*, 104 Tenn. 698, 58 S. W. 330.

MUNICIPAL CORPORATIONS — TORT LIABILITY — GOVERNMENTAL FUNCTIONS — PUBLIC ZOO. — While leaning against a coyote cage located in a park maintained by the defendant city, the plaintiff, a child of four years, was bitten and scratched by the coyote. Plaintiff sues. *Held*, that she may not recover. *Hibbard* v. *City of Wichita*, 159 Pac. 399 (Kan.).

For discussion of this case, see NOTES, p. 270.

PLEADING — AMENDMENT OF DECLARATION AFTER STATUTE HAS RUN — WHETHER AN AMENDMENT FROM COMMON LAW ACTION TO STATUTORY ACTION ON THE SAME FACTS IS PERMISSIBLE. — While performing his duties, an employee was injured by a crank shaft. A statute required shafting in factories to be guarded and took away certain defenses. But the employee sued his employer for common law negligence and did not plead sufficient facts to take advantage of the statute. At the trial he sought leave to amend his statement of claim, so as to sue on the statute. In the meantime the statute of limitations had run on the case. The trial court refused leave to amend. *Held*, that this was not error. *Card* v. *Stowers Pork Packing & Provision Co.*, 98 Atl. 728 (Pa.).

While it is true that the modern tendency is to allow great freedom in the amendment of pleadings, yet courts still refuse to allow amendments introducing new causes of actions. *Church* v. *Boylston & Woodbury Café Co.*, 218 Mass. 231, 105 N. E. 883. Especially is this so when the statute of limitations has run. *Union Pacific R. Co.* v. *Wyler*, 158 U. S. 285. *Contra*, *Rowell* v. *Moeller*, 91 Hun 421, 36 N. Y. Supp. 223. *Cf. Philadelphia, etc. R. Co.* v. *Gatta*, 4 Boyce (Del.) 38, 85 Atl. 721. But some jurisdictions allow them, subject to attack by demurrer or plea. *Williams* v. *Lowe*, 49 Ind. App. 606, 97 N. E. 809; *Atchison, etc. R. Co.* v. *Schroeder*, 56 Kan. 731, 44 Pac. 1093. The question apparently presented therefore seems to be, What constitutes a new cause of action? There is much authority which accords with the principal case, in considering an action pleaded upon statutory negligence as a different cause from one pleaded on the same facts at common law. *City of Kansas City* v. *Hart*, 60 Kan. 684, 57 Pac. 938; *Despeaux* v. *Pennsylvania, etc. R. Co.*, 133 Fed. 1009. Technically such view is correct. But if strictly adhered to it would prevent all amendments after the statute had run. For a defective cause of action is no cause of action, and an amendment correcting the defect must therefore be stating a new cause of action. It would seem as if the purpose of the statute were complied with and equity done, if the test were simply, Do the facts as originally stated sufficiently identify the transaction sued for to give the defendant warning? *Cf. Miller* v. *Erie R. Co.*, 109 App. Div. 612, 96 N. Y. Supp. 244. So a number of cases approximating the principal case have allowed the amendment. *Vickery* v. *New London North R. Co.*, 87 Conn. 634, 89 Atl. 277, 279; *Miller* v. *Erie R. Co.*, *supra*; *Oulitic Stone Co. of Indiana* v. *Ridge*, 174 Ind. 558, 91 N. E. 944. This liberal tendency is further indicated in a holding that amendments from the law of one jurisdiction to that of another are to be allowed after the statutory period. *Missouri, etc. Ry. Co.* v. *Wulf*, 226 U. S. 570.

RULE AGAINST PERPETUITIES — LIMITATIONS OF THE RULE AGAINST A "POSSIBILITY ON A POSSIBILITY." — A testator devised lands in trust for his son Thomas, a bachelor, for life; with a remainder for life to any woman whom Thomas might marry; remainder in fee to the children of Thomas at twenty-one, or in default of such children, to the other children of the testator.

The trustees were directed to sell the land at the death of the survivor of Thomas and his wife. Thomas and his wife died without issue. An originating summons is taken out to determine whether the remainder to the testator's children is valid, and whether the direction to sell worked a conversion of the property. *Held*, that the remainder is valid and the direction to sell void. *In re Garnham*, 115 L. T. R. 148 (Ch. D.).

The modern Rule against Perpetuities requires that an estate must be such as to certainly vest within twenty-one years plus the period of gestation after the death of a person living at the time a gift is made. The vesting of the estate within the period, not the coming into possession is what is required. *Murray* v. *Addenbrook*, 4 Russ. 407, 418. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 205. Also the period of gestation is allowed by the Rule in addition to the twenty-one years. See LEWIS, LAW OF PERPETUITY, 147. Hence in the principal case neither the remainder to the children of Thomas nor the gift over to the children of the testator are barred by the Rule. But a long line of cases lay down an older and independent rule against "double possibilities." *Rector of Chedington's Case*, 1 Co. Rep. 373, 382; *Whitby* v. *Mitchell*, 44 Ch. D. 85, 90. See J. L. Thorndike "Contingent Remainders," *supra*, p. 238. It has, indeed, been doubted whether on principle this applies where the modern Rule against Perpetuities is satisfied. See LEWIS, LAW OF PERPETUITY, 420. At any rate, this older rule seems to be clearly confined to the case of a gift to a child of an unborn person. *In re Nash*, [1910] 1 Ch. 1, 9. See *Monypenny* v. *Dering*, 2 D. M. & G. 145, 170; WILLIAMS, REAL PROPERTY, 21 ed., 413. The mere fact that one parent may be unborn does not bring the case within this older rule, if the parent with reference to whom the child is identified is in being. *In re Bullock's Will Trusts*, [1915] 1 Ch. 493, 501. In the principal case the remainder is to the children of Thomas, a living person. This remainder, therefore, satisfies the older rule; and consequently there can be no objection to the gift over to the testator's children. But it is otherwise with the direction to sell. Where a power may be exercised at a time beyond the limits of the Rule against Perpetuities, it is void. *Hartson* v. *Elden*, 50 N. J. Eq. 522, 526; *Johnston's Appeal*, 185 Pa. St. 179, 189. See GRAY, RULE AGAINST PERPETUITIES, 2 ed., § 473; LEWIS, LAW OF PERPETUITY, 555. In the principal case the power may be exercised after the death of the wife of Thomas; and she may not be *in esse* at the time of the gift. The direction to sell, therefore, violates the Rule against Perpetuities, and is void.

SALES — IMPLIED WARRANTY — LIMITATION OF ACTION. — The plaintiff purchased from the defendant certain copper wire, ordered by description. In Georgia the statutory period of limitation on implied or oral contracts is four years; that on written contracts, six years. More than four but less than six years after the delivery of the wire the plaintiff brings an action for breach of an implied warranty of quality. *Held*, that the suit is not barred. *John A. Roebling's Sons Co.* v. *Southern Power Co.*, 89 S. E. 1075 (Ga.).

The court says that the implied warranty is "written into the contract by the law itself, and . . . is as much a part of the written contract as if expressed therein." Such a statement can only mean that all existing law must be deemed to have been within the contemplation of the parties and so, impliedly, form a part of their written agreement. The decisions of many eminent tribunals voice this conception. See *Hutchinson* v. *Ward*, 99 N. Y. Supp. 708, 709; *Leiendecker* v. *Aetna Indemnity Co.*, 52 Wash. 609, 611, 101 Pac. 219; *Edwards* v. *Kearzey*, 96 U. S. 595, 601. Clearly this is a fiction. Nor do the cases support so broad a proposition. The duty to use due care in forwarding goods intrusted to a common carrier, on a contract of shipment beyond the carrier's line, is held to be a separate unwritten promise and not an integral part of the written agreement. *Penn. Co.* v. *Chicago, etc. Ry.*, 144 Ill. 197, 33 N. E. 415. So,